



California State Board of Education Policy

POLICY #

00-01

DATE

May 2000

WAIVER GUIDELINES

Nonpublic School/Agency (hiring of former LEA employees within 365 days)

REFERENCES

Education Code Section 56101 and 56366.3(a).

HISTORICAL NOTES

None.

Education Code Section 56366.3(a)

No contract for special education and related services provided by a nonpublic, nonsectarian school or agency shall be reimbursed by the state pursuant to Article 4 (commencing with Section 56836.20) of Chapter 7.2 and Section 56836.16 if the contract covers special education and related services, administration, or supervision by an individual who is or was an employee of a contracting district, special education local plan area, or county office within the last 365 days. Former contracting agency personnel may be employed by a nonpublic, nonsectarian school or agency if the personnel were involuntarily terminated or laid off as part of necessary staff reductions from the district, special education local plan area, or county office. [Emphasis added.]

Background

A school district, county office of education (COE), or Special Education Local Plan Area (SELPA) will occasionally request a waiver of this section, typically when it does not object to the hiring of the former employee by the nonpublic school or agency (NPS/NPA). For example:

- (1) The former employee may have officially retired from the public agency; and/or
- (2) The costs of services needed may not be higher through the NPS/NPA.

Requests to waive the "365-day rule" have been routinely approved by the State Board in the past, on the condition that the applying school district, COE, or SELPA agrees with the hiring of the former employee by the NPS/NPA within 365 days of the ending of the employee's employment.

Evaluation Guidelines

A school district, COE, or SELPA requesting a waiver of the "365-day rule" for services provided by an NPS/NPA must justify the request by indicating:

- Why the waiver (to hire a former employee of the applying agency within the 365 days of leaving employment) is necessary; and
- How the waiver will benefit students being served.

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